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In the Texas Court of Criminal Appeals

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COURT OF CRIMINAL APPEALS
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BRADEN DANIEL PRICE,
Appellant

VS.

THE STATE OF TEXAS,
Appellee

On Petition for Discretionary Review
State's Brief on the Merits
From the Fourth Court of Appeals, San Antonio, Texas
No. 04-18-00628-CR
And the 175th Judicial District Court of Bexar County, Texas
Cause No. 2017-CR-10496

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IDENTITY OF THE PARTIES AND COUNSEL

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Trial Judge:

Honorable Catherine Torres-Stahl – Presiding Judge

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STATE'S BRIEF OF THE MERITS

Now comes, Joe D. Gonzales, Criminal District Attorney of Bexar County, Texas, by and through his undersigned Assistant Criminal District Attorney, and files this State's Brief of the Merits on Petition for Discretionary Review.

STATEMENT OF THE CASE

Defendant-Appellant, Braden Daniel Price was charged by indictment with possession of 50 to 2000 pounds of marijuana, a second-degree felony. (CR 16). The defense filed a pre-trial motion to suppress. (CR 39). On February 23, 2018, the trial court conducted a hearing on the suppression motion and denied the defense's request in its Findings of Facts and Conclusions of Law. (CR 36–37). On July 17, 2018, Appellant pled guilty to the charges against him. On August 22, 2018, the court heard punishment evidence and sentenced Appellant to ten years of community supervision. (CR 67). The trial court certified Price's right to appeal his pre-trial motion and he filed his notice of appeal on August 21, 2018 (CR 69, 73).

On May 8, 2019, the Fourth Court of Appeals handed down its opinion reversing and remanding the trial court's judgment. In response, the State filed a motion for rehearing and a motion for en banc reconsideration on June 7, 2019. Both motions were denied on June 14, 2019. The State then filed a petition for

discretionary review which was granted on October 9, 2019. This appeal of the Fourth Court's order follows.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument was requested and denied.

ISSUES PRESENTED

1) Whether the ability to search a suitcase incident to a lawful arrest turns on the nature of the container.

2) Whether the Fourth Court of Appeals erred in finding that the Texas Court of Criminal Appeals opinion in *Lalande v. State*, 676 S.W.2d 115 (Tex. Crim. App. 1984) could not be reconciled with this Court's opinion in *State v. Daugherty*, 931 S.W.2d 268 (Tex. Crim. App. 1996).

STATEMENT OF THE FACTS

Detective Bishop, a narcotics detective with the San Antonio Police Department, received a tip from an Austin police officer that Defendant-Appellant, Braden Daniel Price, had gone out of state to purchase marijuana and was scheduled to fly into the San Antonio Airport that day. (2 RR 9). Detective Bishop confirmed that Appellant was landing in San Antonio, set up surveillance at the airport and brought in a drug-sniffing dog to help locate the bags of marijuana. (2 RR 11). Once Appellant's plane landed, his luggage was sniffed and "alerted on" by the drug-sniffing dog. (2 RR 12, CR 37). The police sent the luggage through the baggage claim area where Appellee picked up the two bags. (2 RR 14). As Appellant exited the baggage claim area, rolling the luggage with him, the officers approached him in the outdoor pick-up area. (2 RR 14, 22; State's Exh. 3-part 1 at 00:03). Because this area was busy with both pedestrian and motor-vehicle traffic, the officers handcuffed Appellant and took him to a secure area to interview him, but he refused to talk. (2 RR 15; State's Exh. 3-part 1 at 04:23). At this point, based on all the information the detective had, Detective Bishop arrested Appellant. (2 RR 16; State's Exh. 3-part 1 at 05:00–05:44; *see* CR 36 (trial court finding that Appellant was arrested after being taken to the secure area)). While they were in the interview area with Appellant no more than several feet from his luggage, Detective Riley

searched Appellant's luggage. (2 RR 20). The search revealed fifty-four vacuum sealed packages of marijuana. (2 RR 20).

The Court of Appeal's Opinion

The court of appeals held that the trial court abused its discretion in denying Appellant's motion to suppress. In the opinion, the court analyzed whether the officers performed a proper search incident to arrest. Specifically, the question was whether Appellant's luggage was "immediately associated" with him. *Price v. State*, No. 04-18-00628-CR, 2019 WL 2013849 at *2 (Tex. App.—San Antonio, May 8, 2019). The facts were not in dispute and the court performed a *de novo* review of the legal principles applied to the facts. In the end, the Fourth Court of Appeals overruled the trial court and held that luggage is not a type of container that can be found to be "immediately associated" with a person. *Id* at *2–3.

SUMMARY OF THE ARGUMENT

The court of appeals erred (and ignored this Court's case law) in finding that Appellant's suitcases were not "immediately associated" with the Appellant based on the fact that they were luggage containers. The nature of the container should not determine whether a container "immediately associated" with an arrestee so that they can be searched incident to arrest. Instead, the factors that should control in a search incident to arrest are the proximity of the person to the container and the timing of the search in relation to the arrest. Under the facts of this case, the search incident to arrest was valid because the search was "substantially contemporaneous" to the arrest, and because of the close proximity of the Appellant to his suitcases before and during the search.

Furthermore, the court of appeals erred in implicating the inevitable discovery doctrine because the search of Appellant's suitcases was not illegal. The court of appeals should have acknowledged the rule in *Lalande v. State*, 676 S.W.2d 115 (Tex. Crim. App. 1984) and found that if the search of a personal item is legal immediately upon arrest and legal at the police station, then it is reasonable and legal for the police to search the personal item at any interval in between.

ARGUMENT

Standard of Review

In reviewing a trial court's ruling on a motion to suppress, an appellate court applies a bifurcated standard of review—the trial court's application of law is reviewed *de novo*, and the trial court's determination of facts are given "almost total deference." *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000); *Guzman v. State*, 955 S.W.2d 85, 88–90 (Tex. Crim. App. 1997). This is because trial judges are "uniquely situated to observe" witnesses firsthand. *Wiede v. State*, 214 S.W.3d 17, 25 (Tex. Crim. App. 2007). Therefore, the trial judge is "the sole trier of fact and judge of the credibility of witnesses." *Id*. If the trial judge fails to make any findings of fact, the reviewing court must "view the evidence in the light most favorable to the trial court's ruling and assume that the trial court made implicit findings of fact that support its ruling as long as those findings are supported by the record." *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). "If the trial judge's decision is correct on any theory of law applicable to the case, the decision will be sustained." *Id*. at 855–56.

Searches Incident to Arrest under the Fourth Amendment

The Fourth Amendment protects the right of a person "to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures." U.S. CONST. amend. IV (emphasis added); *see also* TEX. CODE CRIM. PROC. art. 1.06

(protecting against unreasonable searches and seizures). "The touchstone of the Fourth Amendment is *reasonableness*." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991) (emphasis added); *Valtierra v. State*, 310 S.W.3d 442, 448 (Tex. Crim. App. 2010). "Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances." *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). A reviewing court must review the totality of the circumstances objectively "without regard to the subjective thoughts or intents of either the officer or the citizen." *State v. Weaver*, 349 S.W.3d 521, 526 (Tex. Crim. App. 2011).

Searches conducted without a warrant are *per se* unreasonable unless they fit within a previously established exception. *Katz v. United States*, 389 U.S. 347, 357 (1967). "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to that arrest requires no additional justification." *United States v. Robinson*, 414 U.S. 218, 235 (1973); *see also Preston v. United States*, 376 U.S. 364, 367 (1964) ("Unquestionably, when a person is lawfully arrested, the police have the right, without a search warrant, to make a contemporaneous search of the person of the accused for weapons or for the fruits of or implements used to commit the crime."). "A search is incident to arrest only if it is 'substantially contemporaneous' with the arrest . . . ." *State v. Granville*, 423 S.W.3d 399, 410 (Tex. Crim. App. 2014). "[W]arrantless searches of luggage or other property seized at the time of an arrest

cannot be justified as incident to that arrest if the search is remote in time or place from the arrest or no exigency exists." *United States v. Chadwick*, 433 U.S. 1, 15 (1977) (citing *Preston*, 376 U.S. at 367). Furthermore, "a search incident to arrest extends to the person of the arrestee and objects immediately associated with the person of the arrestee or objects in an area within the control of the arrestee. The object need not be physically attached to the arrestee." *Carrasco v. State*, 712 S.W.2d 120, 123 (Tex. Crim. App. 1986). A search, therefore, of a purse or suitcase found within a few feet of the arrestee has been held as within the bounds of a permissible search incident to arrest. *Holt v. State*, 538 S.W.2d 125, 126–27 (Tex. Crim. App. 1976). "Such searches . . . may be made *whether or not* there is probable cause to believe that the person arrested may have a weapon or is about to destroy evidence."[1] *Chadwick*, 433 U.S. at 15 (emphasis added); *Stewart v. State*, 611 S.W.2d 434, 437 (Tex. Crim. App. 1981).

[1] "A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search. The authority to search a person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect." *United States v. Robinson*, 414 U.S. 218, 235 (1973).

The nature of the container should not determine whether it is "immediately associated" with a person for a proper search incident to arrest.

The lower court's opinion incorrectly turned on the assertion that luggage categorically cannot be searched incident to arrest. Under *United States v. Chadwick*, 433 U.S. 1, 15 (1977), "warrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest if the search is remote in time or place from the arrest or no exigency exists." Furthermore, "[t]he potential dangers lurking in all custodial arrests make warrantless searches of items within the 'immediate control' area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved." *Chadwick*, 433 U.S. at 14–15 (citing *Robinson*, 414 U.S. at 476). As this Court recognized in *Stewart v. State*, 611 S.W.2d 434, 437 (Tex. Crim. App. 1981), "[u]nder a literal reading of *Chadwick*, the scope of its warrant requirements are made applicable only to luggage or other personal property 'not immediately associated with the person of the arrestee.'"[2] Therefore, a container that is

[2] In *Chadwick*, the Supreme Court held that the automobile exception could not be applied to a 200-pound double-locked footlocker seized from the open trunk of an automobile. The defendants were not in the vicinity of the footlocker during the search, which took place in a secure federal building an hour and half after the arrests. *Chadwick*, 433 U.S. at 4–5. The Court reasoned that "a person's expectation of privacy in personal luggage are substantially greater than in an automobile" and thus luggage is "entitled to the protection of the Warrant Clause" (despite its mobility). *Id*. at 13, 15.

The Supreme Court affirmed their ruling in *Arkansas v. Sanders*, 442 U.S. 753 (1979) where they held a warrantless search of a suitcase seized from the trunk of a moving taxi-cab was improper. The Court similarly reasoned that the automobile exception did not apply because the

"immediately associated with the arrestee" is searchable incident to arrest even if it is a suitcase. *See Holt*, 538 S.W.2d at 127 (finding a purse and several suitcases located within a few feet of the defendants searchable incident to their arrest).

The proper question for whether the suitcase was searchable incident to arrest is not the type of the container but the proximity of the person to the suitcase and the timing of the search in relation to the arrest. The Supreme Court has acknowledged the confusion that can happen when the nature of the container controls the nature of the search: "The *Chadwick* dissenters predicted that the container rule would have 'the perverse result of allowing fortuitous circumstances to control the outcome' of various searches."[3] *Acevedo*, 500 U.S. at 578–79 (citation omitted) (holding that when the officers have probable cause to search a vehicle under the automobile exception, the lawful search extends to containers found inside the automobile). For example, under the Fourth Court's container-rule application, if Price had been carrying a backpack or a shoulder bag, then the police could have performed a proper

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"search of luggage generally may be performed only pursuant to a warrant." *Sanders*, 442 U.S. at 762, 766.

In *California v. Acevedo*, the Supreme Court finally overturned the luggage limitation on the automobile exception in holding: "The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." *California v. Acevedo*, 500 U.S. 565, 580 (1991).

[3] "Until today, this Court has drawn a curious line between the search of an automobile that coincidentally turns up a container and the search of a container that coincidentally turns up in an automobile. The protections of the Fourth Amendment must not turn on such coincidences." *Acevedo*, 500 U.S. at 580.

search incident to arrest, but since he had a suitcase, the search was improper.[4] The "fortuitous circumstance" of Appellant's choice of container should not control the outcome. Instead, the determination of whether an item is immediately associated for the purposes of a search incident to arrest should be based on the time and proximity of the search and not the type of item searched.

***Jones v. State*, 640 S.W.2d 918 (Tex. Crim. App. [Panel Op.] 1982)**

The Fourth Court's opinion ignores this Court's precedent in *Jones v. State*. In *Jones*, a confidential informant who had been found reliable in the past reported that a person inevitably matching Jones' description would be arriving at the Houston International Airport on a specified flight and time. *Jones*, 640 S.W.2d at 919–20. The informant also told police that Jones would be carrying a black brief case containing a large quantity of drugs. *Id*. After confronting and identifying Jones, police officers arrested Jones. "Because a crowd was gathering, [Jones] was taken to the airport security office before a full search was made of his clothing and briefcase." *Id*. at 920. The search of the briefcase revealed it contained a controlled

[4] Although suitcases, backpacks, brief cases, and duffel bags have been classified neatly into separate categories in the past, the lines of each category are becoming increasingly blurred in modern times. A simple search on the internet, for example, shows hybrid containers for sale: with the wheels and extendable handle of a luggage container, the shoulder straps of a backpack, and the volume capacity of a suitcase. Another hybrid innovation involves a wheeled luggage container that can be fused with a detachable backpack. Such containers would prove a conundrum for officers forced to decide in the moment whether they are searchable incident to arrest under the Fourth Court's container rule.

substance in the form of 2,997 preludin (phenmetrazine) tablets. *Id*. at 919. As part of his appeal to this Court, Jones challenged the warrantless search of his briefcase. This Court held that the search was a valid search incident to arrest because "[t]he briefcase was immediately associated with appellant's person." *Id*. at 921.

Carrasco v. State, 712 S.W.2d 120 (Tex. Crim. App. 1986)

In *Carrasco v. State*, Carrasco challenged the search incident to arrest of a shoulder bag that the trial court determined was on the ground several feet from Carrasco but not within her physical possession. *Carrasco*, 712 S.W.2d at 122. Carrasco had been involved in a one-car collision with a highway guardrail in the early morning hours. *Id*. at 121. After observing her appearance, police officers placed Carrasco under arrest for public intoxication. *Id*. While one police officer was speaking with her, another officer began rummaging through the bag. *Id*. at 122. On appeal, the Fourteenth Court of Appeals held in part that "since the officer had possession of the bag, there was no valid search incident to arrest." *Id*. at 122. This Court, however, disagreed and held that the search was valid:

> To interpret "immediately associated with the person" to require actual bodily attachment would have the effect of vitiating "the search incident to arrest" exception to the warrant requirement. Perforce, to interpret *Chadwick* as limiting a police officer to the search of a defendant's repository, incident to arrest, only in the event that a defendant is contemporaneously and physically grasping that repository would be absurd. Indeed the Supreme Court recognized this dilemma in *New York v. Belton* . . . and noted:

> It seems to have been the theory of the Court of Appeals that the search and seizure in the present case could not have been incident to the respondent's arrest, because Trooper Nicot, by the very act of searching the respondent's jacket and seizing the contents of its pocket had gained "exclusive control" of them. But under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his "exclusive control."

Id. at 123 (quoting *New York v. Belton*, 453 U.S. 454, 461, n.5 (1981) (internal citations omitted)).

This Court also noted:

> Perforce, there are two factors that take the search in *Chadwick* out of the "search incident to arrest" exception. One, the officers had reduced the property in question to their exclusive control by removing the property from the site of the arrest to a federal building and by placing the arrestee at another location, namely in a jail cell. The second factor, that there be no danger that the defendant be able to gain access to the property, was met in that the defendant was not even in the same building as the property and was in fact securely in jail.

Id. at 122–23.[5]

[5] Moreover, although *Carrasco* did not mention it, it is important to note that in *Chadwick*, the container in question, a footlocker, was "locked with a padlock and a regular trunk lock." *Chadwick*, 433 U.S. at 4–5. Furthermore, the search of the footlocker took *place an hour and half after the arrest* had been made. *Id*. at 4.

Under both this Court's and the Supreme Court's case law, Appellant's luggage was a valid search incident to arrest because it was "immediately associated" with his person.

As applied to the case *sub judice*, Appellant's suitcases were "immediately associated" with his person. Moreover, officers did not have "exclusive control" over the suit cases at the time of the search. Appellant was physically holding his luggage when he was initially detained in the pickup area. The trial court found that Appellant was placed under arrest after reaching the airport security office. (CR 36; 2 RR 16; State's Exh. 3-part 1 at 05:00–05:44). His luggage remained within a few feet of him leading up to the arrest and while the search was completed *within his reach*. (2 RR 20; State's Exh. 3-part 2 at 00:00–03:50). Furthermore, the suitcases in questions were unlocked and easily opened during the search. (State's Exh. 3-part 2 at 00:00–03:50). The Fourth Court, therefore, erred in finding that the search was not a valid search incident to Appellant's arrest.

The inevitable discovery doctrine was not implicated here because there was no illegal search; therefore, the reasoning in Lalande v. State should be applied to support the trial court's decision.

Even though neither party argued at trial or on appeal that the search of Price's luggage fell within the scope of the inevitable discovery doctrine, the Fourth Court used the doctrine to counter any justification that may support the trial court's denial of the suppression motion. First, the court noted that this Court's opinion in *Lalande*

v. State, 676 S.W.2d 115 (Tex. Crim. App. 1984) appeared to support a lawful search of Price's luggage. But then the court dismissed the reasoning in *Lalande v. State*, finding that it could not be reconciled with this Court's rejection of the inevitable discovery doctrine in *State v. Daugherty*, 931 S.W.2d 268, 271 (Tex. Crim. App. 1996). The court, however, misinterpreted the analysis in *Lalande*. The *Lalande* opinion did not mention the inevitable discovery doctrine. Instead, the opinion acknowledged that a personal item can be lawfully searched when the personal item will accompany the arrested person into custody. *Lalande*, 676 S.W.2d at 118. Essentially what this Court in *Lalande* acknowledged is that if the search of a personal item is legal immediately upon arrest and legal at the police station, then it is reasonable and legal for the police to search the personal item at any interval in between.

The Court's holding in *Lalande* did not trigger the inevitable discovery doctrine because the search was held to be lawful. The inevitable discovery doctrine "assumes that the evidence was illegally obtained." *Daugherty*, 931 S.W.2d at 271. It is not a measure for the court to use to decide whether the search was lawful in the first place.[6] In *Lalande* and in the instant case, the evidence was not illegally

[6] "The inevitable discovery doctrine *assumes* a causal relationship between the illegality and the evidence. It *assumes* that the evidence was actually "obtained" illegally. The doctrine then asks whether the evidence would have been "obtained" eventually in any event by lawful means. But the fact that evidence could have been "obtained" lawfully anyway does not negate the fact that it was in fact "obtained" illegally. Under Article 38.23 the inquiry regarding the

obtained; therefore, the Fourth Court improperly invoked the inevitable discovery doctrine and *Daugherty*. As evidenced by the video taken of Price's arrest, the officers were still in the administrative process of his arrest. And while the detective did not specifically testify to all of the procedures he would have performed during the arrest of Price, he did testify that Price would be taken downtown. (2 R.R. at 26). An inventory search at the police station is not inevitable discovery—it is a legal search. *See Illinois v. Lafayette*, 462 U.S. 640, 646 (1983). Since the search of Price's luggage was legal upon arrest and the search of his luggage at the police station was legal, the officers had the right to inspect the luggage at any point in between.

possible legal attainment of the evidence should never be reached. Once the illegality and its causal connection to the evidence have been established, the evidence must be excluded." *Daugherty*, 931 S.W.2d at 270.

PRAYER

The State prays that this Honorable Court reverse the court of appeals and reinstate the judgment of the trial court.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I, Paul Cho, hereby certify that the total number of words in this brief is 3,645. I also certify that a true and correct copy of the State's Brief of the Merits was emailed to Ronald P. Guyer, at Rpguyer@airmail.net, counsel for Appellant, and to Stacey Soule, State Prosecuting Attorney, at Stacey.Soule@spa.texas.gov, on this 25th day of October, 2019.

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